

701 CMR 6.00:       TRANSIT-ORIENTED DEVELOPMENT (TOD)  
                              INFRASTRUCTURE AND HOUSING SUPPORT PROGRAM

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6.01: Authority

701 CMR 6.00 is promulgated by the Executive Office of Transportation pursuant to authority granted within St. 2004, c. 291, s. 2I, Item 6001-0421, M.G.L. c. 6A, § 19 and M.G.L. c. 30A §§ 2 and 3. 701 CMR 6.00 establishes rules, standards, and procedures for the Transit-Oriented Development Infrastructure and Housing Support Program created by Section 2I, Item 6001-0421 of Chapter 291 of the Acts of 2004.

6.02: Purpose

701 CMR 6.00 is intended to establish a program, referred to as the Transit-Oriented Development Infrastructure and Housing Support Program (“TOD Program”). The goal of this program is to help create more compact, mixed-use, walkable development close to Transit Stations. To accomplish this objective, the program will provide financing for Pedestrian Improvements, Bicycle Facilities, Housing Projects, and Parking Facilities within .25 (1/4) miles of a Commuter Rail Station, Subway Station, Bus Station, or Ferry Terminal.

6.03: Definitions

**Affordable Housing**—Means housing units that are affordable to and occupied by individuals and households whose annual income is less than 80 percent of the area-wide median income as determined by the United States Department of Housing and Urban Development (“HUD”), adjusted for household size. Affordability shall be assured for a period of no less than 30 years through the use of an Affordable Housing restriction as defined in M.G.L. c.184, § 31.

**Bicycle Facility**—Means any on- or off-road facility designed for bicycle travel and parking, including, but not limited to, bike lanes and shared-use paths, curb cuts, bicycle parking facilities such as racks and lockers, informational and directional signage, and related facilities.

**Bus Rapid Transit**—means a type of transit service that combines the quality of rail transit and the flexibility of bus transit, allowing vehicles to operate on exclusive transit ways, high occupancy vehicle lanes, expressways, or ordinary streets.

**Bus Rapid Transit Station**—means a passenger stop on a Bus Rapid Transit line.

**Bus Station**—Means a passenger stop with adequate shelter located on a fixed-route bus line that connects to a Regional Transit System; or, a multi-modal transit terminal with ticket sales and a passenger waiting area serving multiple bus lines and a Regional Transit System; provided that the passenger stop shall be subject to public ownership, access, and/or control in perpetuity.

**Commonwealth Capital Score**—means the numerical score that a municipality receives from OCD based upon measures taken to promote the Sustainable Development Principles.

**Commuter Rail Station**—means a passenger stop on a commuter rail line.

**Department of Housing and Community Development (“DHCD”)**—means the Department of Housing and Community Development established pursuant to M.G.L. 23B.

**District Improvement Financing**—means a redevelopment financing tool authorized by M.G. L. c. 40Q which allows the use of tax increment financing to fund public purpose projects.

**Eligible Location**—means an area within .25 (1/4) miles of an existing Transit Station or Planned Transit Station as defined herein. A Project shall be deemed to be within .25 miles of an existing Transit Station or Planned Transit Station if the Project Parcel and proposed Project are located within .25 miles of any part of the existing or Planned Transit Station, including, but not limited to, parking areas proximate to the existing Transit Station or Planned Transit Station, entrance gates, and ticket dispensers. An Eligible Location shall have adequate access to the existing Transit Station or Planned Transit Station or will have adequate access resulting from the proposed Project. A bicycle lane or bicycle path shall be deemed to be in an Eligible Location when it connects to and provides direct bicycle access to the Transit Station and is located within .25 miles of any part of the Existing or Planned Transit Station.

**Executive Office of Environmental Affairs (“EOEA”)**—means the Executive Office of Environmental Affairs established pursuant to M.G.L. c. 6A, § 2 and M.G.L. c. 21A.

**Executive Office of Transportation (“EOT”)**—means the Executive Office of Transportation established pursuant to M.G.L. c. 6A, §§ 2, 19.

**Ferry Terminal**—means a fixed water transportation passenger facility that is served by an American Disabilities Act-compliant, Architectural Access Board-compliant, and publicly accessible commuter water transportation service operating on a regular schedule; provided that the facility and transportation service shall also be subject to public ownership, access, and/or control in perpetuity.

**Financial Assistance**—means a loan, grant, or other type of funding or financial support made available by the Massachusetts Bay Transportation Authority, the Massachusetts Development Finance Agency, the Massachusetts Housing Finance Agency, the Executive Office of Environmental Affairs, and the Department of Housing and Community Development.

**Housing Project**—means development of housing by means of new construction, redevelopment or rehabilitation at least 25 percent of which must be affordable.

**Massachusetts Bay Transportation Authority (“MBTA”)**—means the Massachusetts Bay Transportation Authority established pursuant to M.G.L. c. 161A.

**Massachusetts Development Finance Agency (“MassDevelopment”)**—means the Massachusetts Development Finance Agency established pursuant to M.G.L. c. 23G.

**Massachusetts Housing Finance Agency (“MassHousing”)**—means the Massachusetts Housing Finance Agency established pursuant to Chapter 708 of the Acts of 1966.

**Mixed-Use Development**—means a planned, permitted, under construction, or built development contained on a single parcel, adjoining parcels, or parcels in close proximity that includes different, complementary uses (residential, commercial, institutional, industrial, and other uses), and that provides for a variety of activities throughout the day.

**Office for Commonwealth Development**—means the state administrative office charged with overseeing and coordinating the policies and programs of the following agencies and secretariats: EOE, DHCD, and EOT, as defined herein.

**Parking Demand and Supply Study**—means a detailed analysis of demand and supply of parking in the vicinity of the proposed Parking Facility that documents the need for the proposed Parking Facility.

**Parking Facility**—means a facility which may include, without limitation, structured parking and on street parking that is designed primarily for automobile parking, but that should also include bicycle parking.

**Parking Plan**—means a detailed plan describing how the proposed Parking Facility meets the needs identified by the Parking Demand and Supply Analysis.

**Parking Ratio**—means the ratio of parking spaces per dwelling unit or per square footage of development.

**Pedestrian Improvement**—means any improvement that supports, encourages, and/or attracts pedestrian movement to and through a Transit-Oriented Development including, but not limited to, sidewalks, shared-use paths, crosswalks, walkways, street trees, street furniture, plazas, benches, landscaping, informational and directional signage, pedestrian signals, traffic calming, and other related improvements.

**Planned Development**—means one or more housing or Mixed-Use Developments allowed by local land use plans and/or zoning regulations and likely to be completed during the next five years.

**Planned Transit Station**—means a Transit Station that is planned and programmed in a state, regional transit authority, or municipal implementation plan.

**Project**—means any Pedestrian Improvement, Bicycle Facility, Housing Project, and/or Parking Facility at an Eligible Location and proposed for funding pursuant to St. 2004, c. 291, s. 2I, Item 6001-0421 and 701 CMR 6.00 within or proximate to the Transit-Oriented Development.

**Project Parcel**—means a parcel of land on which the proposed Project is located.

**Proposed Development**—means one or more new housing or Mixed-Use Developments that have been submitted for approval by a local land-use authority, have been approved, are under construction, or for which construction has been completed during the last year.

**Public Entity**—means a unit of state or local government including a county, municipality, local public authority, special district, district commission, regional government, any agency or instrumentality of government, subdivision of the Commonwealth and state authorities as defined in M.G.L. c. 29, § 1.

**Regional Transit System**—Means the MBTA, as defined herein, or a transportation area established pursuant to M.G.L. c.161, or a regional transit authority established pursuant to M.G.L. c.161B.

**Secretary**—means the Secretary of the Executive Office of Transportation.

**Subway Station**—means a passenger stop on a rapid transit or light-rail service line.

**Sustainable Development Principles**—means principles adopted by OCD to guide sustainable development through the integration of state agencies' policies, programs, and regulations on energy, environment, housing, and transportation.

**Technical Assistance**—means assistance related to planning, marketing, financing, community outreach, and/or other forms of consultation related to identifying and accessing resources for a Project.

**Transit Station**—means Commuter Rail Station, Subway Station, Ferry Terminal, Bus Station, or Bus Rapid Transit Station.

**Transit-Oriented Development (“TOD”)**—Means one or more planned, proposed, or existing developments around a Transit Station and characterized by a predominance of the following: higher density, a mix of uses, pedestrian-oriented design, facilities for nonmotorized transportation such as bicycle transportation, Parking Ratios that reflect access to transit, and direct and convenient access to a Transit Station.

**TOD Program**—Means the Transit-Oriented Development Infrastructure and Housing Support Program created by St. 2004, c. 291, s. 2I, Item 6001-0421 and 701CMR 06.00.

#### **6.04 Funding**

Pursuant to St. 2004, c. 291, s. 2I, Item 6001-0421, EOT is authorized to provide funding to eligible Projects in the form of grants or loans under the TOD Program. EOT, in consultation with OCD and DHCD, is hereby authorized to determine the type of eligible costs and the appropriate type and amount of funding for Eligible Projects, and to determine the availability of grants and/or loans for each funding round of the TOD Program. EOT shall identify the availability of grants or loans in advance of

each funding round of the TOD Program in guidelines, applications or other appropriate materials issued by EOT.

#### 6.05 Eligibility

In order to be eligible for funding under 701 CMR 6.00, a Project must satisfy each of the following three requirements:

- (1) Type of Project: A Project must involve at least one of the following:
  - a. The design, construction, reconstruction, or improvement of a Pedestrian Improvement, Bicycle Facility, and/or Parking Facility serving a Mixed-Use Development; or,
  - b. The development or rehabilitation of a Housing Project, at least 25 percent of which must be affordable as defined in 701 CMR 6.03.
- (2) Location: A Project must be situated in an Eligible Location as defined in 701 CMR 6.00.
- (3) Technical or Financial Assistance: A Project must receive Technical or Financial Assistance from one or more of the following agencies or authorities: DHCD, EOE, MBTA, MassHousing, or MassDevelopment.

#### 6.06 Eligible Applicants

Eligible applicants for funding pursuant to the TOD Program include any and all public entities. In addition, eligible applicants may include a partnership between public and private entities if the following criteria are satisfied:

- 1) the Public Entity is the lead applicant;
- 2) the Public Entity is the recipient of funding through the TOD Program;
- 3) the applicant demonstrates compliance with 701 CMR 6.07 concerning public benefit; and,
- 4) the applicant certifies that it will comply with all applicable laws including, without limitation, applicable procurement procedures for the Project. Eligible applicants shall also include, without limitation, Massachusetts Housing Partnership, MassHousing, MassDevelopment, the MBTA, and other regional transit authorities.

#### 6.07 Public Benefit

In order to be eligible for funding under 701 CMR 6.00, a Project must be of public benefit, in the public interest, and for a public purpose, and any benefit to private entities or individuals shall be indirect and incidental and not the principal purpose of the Project.

#### 6.08 Application Requirements for All Projects

In addition to compliance with 701 CMR 6.06 and 6.07, all eligible applicants for funding pursuant to the TOD Program must submit with their applications the following:

- (1) Documentation that the applicant possesses or will possess control of the Project Parcel.

- (2) A Project budget showing all sources and uses of funding.
- (3) Evidence of the Project's readiness to proceed.
- (4) Documentation that the Project has local support, including, but not limited to, a letter of support from the chief elected official.
- (5) Documentation that the Project Parcel is within or proximate to a TOD.
- (6) Any preliminary plans and specifications for the proposed Project.
- (7) A schedule for Project completion.
- (8) For a proposed Parking Facility, a Parking Demand and Supply Study and a Parking Plan.
- (9) For proposed Pedestrian Improvements and/or Bicycle Facilities, documentation that the proposed Project complies with the American Disabilities Act and all federal, state, and local statutes, regulations, ordinances or other applicable laws.

#### 6.09 Evaluation Criteria for All Projects

All applications will be reviewed based on the following the evaluation criteria:

- 1) Quality of the TOD of which the proposed Project will be a part or proximate to;
- 2) Extent to which the proposed Project will increase transit use, improve public access to transit, and increase opportunities to walk, bicycle, or use other nonmotorized transportation to carry out daily activities such as shopping and commuting;
- 3) Extent to which the proposed Project will enhance, expand, or otherwise create new TOD;
- 4) Relationship between the proposed Project, the TOD of which it will be a part or proximate to, and local and regional plans;
- 5) Extent to which the Project advances the Commonwealth's Sustainable Development Principles;
- 6) The financial feasibility of the Project, including, but not limited to, reasonableness of all costs and verifiable evidence that there are sufficient sources to cover all costs;
- 7) The Project's readiness to proceed, including, but not limited to, evidence of all required zoning and permits;
- 8) Extent to which the proposed Project receives local support;
- 9) The use and extent of federal, state, and municipal funding and private investment;
- 10) Whether the proposed project is located in a smart growth zoning district pursuant to M.G.L. c. 40R and/or is located in a District Improvement Financing area; and
- 11) The most current Commonwealth Capital Score of the municipality in which the Project is located.

#### 6.10 Evaluation Criteria for Bicycle Facilities and Pedestrian Improvements

All applications for funding for Bicycle Facilities and Pedestrian Improvements shall be evaluated based on the following criteria:

- 1) Extent to which the Project improves and enhances pedestrian and/or bicycle access to transit;
- 2) Extent to which the Project improves and enhances bicycle and/or pedestrian access to developments within the TOD;
- 3) Extent to which the Project encourages pedestrian and/or bicycle activity within the TOD;
- 4) Extent to which the Project promotes public safety for bicyclists and pedestrians; and
- 5) Whether the project is consistent with all applicable federal, state, and local plans and requirements for such facilities.

### 6.11 Evaluation Criteria for Parking Facilities

The principal criteria for evaluating all Parking Facility applications will be the extent to which the proposed Parking Facility will serve to increase transit ridership. In addition, all applications for funding for Parking Facilities will be evaluated based on the following criteria:

- 1) Extent to which Project allows sharing of parking between different land uses;
- 2) Extent to which Project facilitates consolidation of parking to make land available for compact, mixed use development;
- 3) Extent to which the Project reduces the amount of required parking by supporting measures such as car sharing, carpooling, and/or other parking reduction measures;
- 4) Extent to which Project incorporates Parking Ratios that reflect access to transit, where appropriate;
- 5) Extent to which Project design contributes positively to the pedestrian environment; and
- 6) Extent to which applicable parking fees encourage efficient use of parking and maximize patronage of retail stores.

### 6.12 Evaluation Criteria for Housing Projects

All applications for funding for Housing Projects shall be evaluated based on the following criteria:

- 1) Extent to which the Project increases housing production;
- 2) Extent to which the Project satisfies significant housing need for region or local community; and
- 3) Extent to which the Project meets DHCD criteria for Housing Projects, including, but not limited, to:
  - Design quality;
  - Development team;
  - Marketability;
  - Financial feasibility;
  - Readiness to proceed.

### 6.13 Application Process

All proposed Projects will require submission of a main application and a supplemental application specific to each type of Project in accordance with program documentation issued from time to time, including, but not limited to, guidelines, guidance, applications, and other materials.

### 6.14 Administration

EOT, in consultation with OCD and DHCD, shall administer St. 2004, c. 291, s. 2I, Item 6001-0421 and 701 CMR 6.00 in accordance with St. 2004, c. 291, s. 2I, Item 6001-0421 and 701 CMR 6.00. EOT is authorized, in consultation with OCD and DHCD, to issue guidelines, guidance, applications, or other materials as necessary to implement the TOD Program. EOT is authorized to enter into any and all interagency agreements or other agreements to reflect the interdisciplinary nature of this program and to increase the coordination of this program. EOT is also authorized to establish maximum award amounts through guidelines, guidance, applications, or other materials.

### 6.15 Severability

If any provision of 701 CMR 6.00 or their application is held invalid, such invalidity shall not affect other provisions or applications of 701 CMR 6.00, which can be given effect with the invalid provision or application, and the provisions of 701 CMR 6.00 are declared to severable.

#### 6.16 Waiver

The Secretary of EOT may waive, in writing, any provision of these regulations not required by statute on findings that such waiver is consistent with the intent of the statute and these regulations and that desirable relief in the public interest will be accomplished through such waiver.

REGULATORY AUTHORITY: St. 2004, c. 291, s. 2I, Item 6001-0421; M.G.L, c.6A, § 19